



Zoning Board of Adjustment

April 24, 2013

*****Special***
Meeting
(Minutes)**

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:19pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Steven Freesman, Esq.- Vice Chairman
Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
Thomas Hennessey
Andrew Shyong, DDS- Alternate #1
Joan Marks- Alternate #2
John Galluccio, Esq.- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Paul Demarest- Board Coordinator

Absent

Heena Dhorajia, EIT
Arthur Dolson- Council Liaison
Jeffrey Morris, PE- Board Engineer

◇ **MEMORIALIZATION OF RESOLUTION(S)** ◇

Mr. Demarest informed that requested items as per the voice vote for Case #'s Z-2012-11 (120 High Street/Carpentieri) and Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.) have still not been filed, thus, the Board postponed votes to memorialize the Resolutions. Mr. Demarest stated that the Resolutions for dismissed Case #'s Z-2012-01 (318 Harrington Avenue/Baquiran) and Z-2011-15 (447 High Street/Haverilla) still do not indicate the correct dates that the applicants caused postponements of hearings; Mr. Kates said such will be revised in order to allow for votes on memorialization at the May 15, 2013 Meeting. He anticipated the Resolution for Case #Z-2011-11 (247 West Street/Osso) being completed in a timely fashion provided requested revisions are received beforehand.

◇ **OPEN TO THE PUBLIC** ◇

n/a;

◇ **CASELOAD** ◇

**Case #Z-2013-04
Arcella Family Trust
322 Harrington Avenue
(Block 1312/Lot 11)
District #3- Business**

Case History

The applicant is seeking pre-existing/nonconforming status for a 3-family use at the subject property; the application was received March 15, 2013 and scheduled for the March 27, 2013 Work Session, at which time, it was perfected; pending the Board's receipt of requested items and public noticing requirements, the application was scheduled for the April 24, 2013 (Special Meeting).

Representation

- 1.) Andrew Kohut, Esq., Wells, Jaworski, & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey;

Witnesses

- #1: Steven Arcella, 322 Harrington Avenue, Closter, New Jersey;
#2: Joseph Marigliani, 19 Cottage Avenue, Montvale, New Jersey;
#3: Steven Lydon, PP, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey;

Exhibits

- A-1: pre-filed informational packet consisting of 8 categories of documentation pertaining to subject property, uncredited and undated;

Relief Sought

- 1.) Pre-Existing <prior to December 19, 1940>/Nonconforming Status for 3-Family Use as per NJSA 40:55D-68;

Response to Prior Board and/or Subcommittee Requests

n/a;

New Board Requests

n/a;

Public Questions

n/a;

Public Comments

n/a;

Decision

A motion was made by Mr. Ouzoonian and seconded by Mr. Hennessey, to approve the application with no conditions. The motion passed (7-0-0):

YES- Shyong/Hennessey/Ouzoonian/Monaco/West/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

Conditions

n/a;

**Case #Z-2013-02
Paul Keller
24 Robinhood Avenue
(Block 702/Lot 6)
District #2- Residential B**

Case History

The applicant is appealing the determination of the Zoning Officer as to the legality of the continuation of a 2-family use at the subject property; in the alternative, he would seek a Use Variance; the application was received January 16, 2013 and scheduled for the February 27, 2013 Work Session, at which time, it was perfected; pending the Board's receipt of requested items and public noticing requirements, the application was scheduled for the April 17, 2013 Meeting; the applicant and both his engineer and planner completed initial testimony and the case was adjourned, pending the presentation of additional items (pre-filing not required), to the April 24, 2013 (Special) Meeting.

Representation

1.) David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey;

Witnesses

#1: Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey;

Exhibits

- A-3:** 2 photographs depicting rear exterior condition and 1st floor kitchen respectively of subject house, prepared by Witness #1 and dated December 19, 2012;
- A-4:** 5 photographs depicting 2nd floor kitchen, bedroom, stairway, entry and bathroom respectively of subject house, uncredited and undated;
- A-5:** pre-filed site plan prepared by Witness #1 dated December 28, 2012 and last revised April 23, 2013;

Relief Sought

- 1.)** Appeal of Zoning Officer Determination: pre-existing/non-conforming status for 2-family use <WITHDRAWN>;
- 2.)** Use Variance: 2-family use (house was built after December 19, 1940 and does not meet all current bulk requirements)-
 - a.)** Bulk Variance: lot size (12,500 sf minimum required/9,375 sf provided);
 - b.)** Bulk Variance: lot width at building setback line (100' minimum required/75' provided);
 - c.)** Bulk Variance: side yard <left-facing> setback (15' minimum required/13.50' provided);
 - d.)** Bulk Variance: building coverage (20% maximum allowed/21.51% provided);
 - e.)** Bulk Variance: impervious coverage (30% maximum allowed/40.85% provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicant incorporated window locations and ceiling heights of both dwelling units onto floor plan;

New Board Requests

n/a;

Public Questions

- 1.) Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey;

Public Comments

n/a;

Decision

A motion was made by Mr. Hennessey and seconded by Vice Chairman Freesman, to approve the application with no conditions. The motion passed (7-0-0):

YES- Shyong/Hennessey/Ouzoonian/Monaco/West/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

Conditions

n/a;

The Board recessed at 9:38pm.

The Board reconvened at 9:41pm.

◆ **MISCELLANEOUS** ◆

Chairman Bianco began a discussion on Mr. Kates' draft of the Board's merged 2011 and 2012 Annual Report to the Planning Board and Governing Body. With respect to enhancing the Borough Code's zoning terminology by incorporating illustrations, Chairman Bianco noted that the picture depicting building height was inaccurate since the peak, not midpoint, is used in determining the calculation. He noted that he prefers having the Borough's Zoning Code in sync with the definition of building height prescribed by the New Jersey Uniform Construction Code, which takes the measurement from the peak of a building; to emphasize his point, Chairman Bianco said a building could, technically, be constructed to a height of 56' (double the 28' maximum allowance to the midpoint) to the peak by having a 45 degree roof angle, and no variance relief would be required. He further noted that basements and cellars come into play when calculating building height; he said much of the Borough's housing stock was built with cellars, which have often been converted to habitable space by providing a means of egress. Mr. Sinowitz clarified that, regardless, if the bottom level of a house remains greater than 50% below grade, it is still considered a cellar, not a basement and, therefore, not calculated as part of floor area ratio. Mr. Kates stressed the illustrations within the draft are offered only as an example of what can be done, not to be definitive as to what the Borough Code dictates. The Board's consensus was that the recommendation to utilize illustrations should be included in the Report's final draft pending the absence of copyright infringement (selected illustrations originated from Burgis Associates, Inc.).

As a means of having consistency within the Borough Code, Mr. Kates said the definition of “impervious surface” indicated in both Chapter 200-5 (zoning ordinance) and Chapter 170A-5 (zero increase in storm water runoff ordinance) should be revised so they do not conflict with each other. Chairman Bianco explained the Borough only started regulating impervious coverage in 1986 in response to a flurry of industrial sites cropping up on and nearby Ruckman Road. He said he is a proponent of retaining as much natural earth on a parcel as possible as opposed to coverage with wood, stone, asphalt, concrete, etc.; he said he is against the trend of municipalities recognizing newly-developed materials that claim to be permeable and allow for absorption of storm water. Chairman Bianco believed the suggested definition of “impervious surface” written into the draft circumvents the intent of the Borough’s effort to preserve green space by having a percolation rate determine what constitutes a pervious surface. Mr. Ouzoonian concurred, saying such permeable surfaces eventually fail because they become compacted and require maintenance, of which the Borough could not ensure. Mr. Sinowitz agreed, stating such materials can only accommodate gentle rain, not intense downpours. Mr. Hennessey disagreed, saying the Borough requires storm water management systems, such as seepage pits, to curtail such drainage concerns. Chairman Bianco also believed aesthetics are important to take into consideration. Mr. Kates believed the Report could simply state the Governing Body should consult with the Borough Engineer on the inconsistencies of the definition with which the Board has wrestled over for years. Mr. Ouzoonian questioned if naturally-laid rock should be considered part of impervious coverage; Mr. Hennessey pointed out there is a brook with rock bottom that dissects his property and did not feel it should be part of his parcel’s impervious coverage. Chairman Bianco believed the current maximum allowance of 30% should remain unchanged and that the definition used within the zoning ordinance is acceptable. He warned that the Borough is steadily transforming from a rural suburban area to one that is suburban urban.

Mr. Kates believed the Borough should retain a court reporter on a per diem basis to attend all meetings (not work sessions) and such would be paid for through increased application fees. He felt such is important especially in those instances when the Board convenes in a location other than Borough Hall where the permanent computer recording system is. Mr. Kates noted if a transcript is needed in response to an appeal filed against a Board decision, the Board would receive a courtesy copy. He stated the standard appearance fee for a court stenographer is approximately \$250.00 to \$300.00 per meeting. Mr. Kates stated that transcripts provided by a frequent litigant, Jesse Rosenblum, are often incoherent because they are based on compact disc recordings, and such complicates putting forth a good defense of the Board in court. Mr. Demarest agreed to request from the Borough administration that more and/or higher quality microphones be installed in the Council Chambers.

To the issue of excessive rear yard amenities as it relates to new home construction, Chairman Bianco explained that purchasers discover additional appurtenances cannot be installed without first obtaining variance relief because developers often build to the maximum allowance with respect to building and impervious coverage; he said the draft suggests the existing and required bulk items be disclosed within the advertising of a property. Mr. Kates noted an additional suggestion is that a 1% to 2% reserve (of the total lot size) be required of a new home builder to allow for future amenities without Board approval. Mr. Hennessey revealed that a new house was constructed recently at 130 Durie Avenue, and the approved design included an in-ground swimming pool, though it was not installed. Mr. Kates replied that the draft should inquire about how the enforcing agent determines whether the necessary amenities are within an approval design. Mr. Sinowitz suggested the maximum allowance remain at 30%, however,

only 28% should be permitted in presentation. Vice Chairman Freesman disagreed, saying the Borough cannot prevent a builder from utilizing the full parameters permitted by ordinance, and he insisted buyers and their paid professionals must do their due diligence prior to closing on a property; Ms. Marks concurred, saying requiring a reserve is unrealistic. Chairman Bianco responded that several municipalities have addressed the issue by restricting the amount of rear yard impervious coverage. Mr. Galluccio felt the Borough is having difficulty enforcing conditions post-Board approvals and should not take on making pre-conditions. Ms. Marks said the reality is that builders are not pro-Closter as it is and such would adversely affect property values. Mr. Ouzoonian reiterated that the overwhelming majority of new house projects must obtain Major Soil Movement approval from the Planning Board, which always makes the applicants aware of excessive coverage. The consensus of the Board was to maintain the current maximum allowance for building and impervious coverage as well as not to introduce the concept of a reserve for new construction.

As for modernizing permitted uses in District #3 (Business), Chairman Bianco revealed that the recent Board recommendation to have the Borough adopt the use group classification stipulated in the New Jersey Uniform Construction Code as its own (means to lessen conflict and confusion with the use classification within the Borough's Zoning Code) was not done so by the Governing Body, nor was its request to ban high-hazard and institutional establishments.

Mr. Kates stated that of the 34 Board applications filed in 2011 and 2012, 7 dealt with 2-family use ratification. He suggested the Borough hire a planner to advise it on how to set appropriate area requirements, perhaps as a function of the majority of lot sizes in distinct neighborhoods, in other words, subcategorize District #2 (Residential B), together with a shorter look-back period. Chairman Bianco disagreed because District #2 is a mixture of older and newer homes; Mr. Kates countered that a 12,500 sf lot size is the exception, not the rule in District #2, and the fact that the issue of 2-family use is not being dealt with by the Governing Body is partially to blame for the Board's heavy agenda. Mr. Sinowitz revealed that he argued against undersized lots being impacted by the Borough's reduction in maximum allowance of impervious coverage (from 40% to 30%) in 2001 because it would and has resulted in said lots becoming nonconforming. Chairman Bianco disagreed, pondering why the ordinance should be drastically changed if such would affect approximately only 125 houses out of 2,700; he favored the review procedure in place.

Mr. Sinowitz outlined his request, as Zoning Officer, for an Interpretation by the Board on how to review applications for 2-family use ratification; he explained that the Borough established zoning districts with Ordinance #87 (adopted April 12, 1923), created its first Limiting Schedule with Ordinance #192 (adopted December 19, 1940) which allowed for the construction of 2-family housing in District #2 and limited 2-family housing with Ordinance #1955:13 (adopted December 28, 1955) which prohibited the construction of 2-family housing in District #2 except in the conversion of an existing building. The Board postponed debate on the matter until further notice.

◇ADJOURNMENT OF (SPECIAL) MEETING◇

A motion was made by Dr. Shyong and seconded by Ms. Marks, to have the Board adjourn at 11:02pm. The motion passed by acclamation.
